5-31-2012

State v. Dycus Appellant's Brief Dckt. 39608

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff/Respondent,	)	Case No. CR-2010-16949
vs.	)	
	)	Docket No. 39608-2012
ROSEMARY PEARL DYCUS,	)	
	)	
Defendant/Appellant.	)	
	)	

APPELLANT'S BRIEF

Appeal from the District Court of the
Seventh Judicial District of the State of Idaho,
in and for the County of Bonneville

HONORABLE JOEL E. TINGEY, District Judge.

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Statement of the Case and Factual Summary

On October 25, 2010, Officer Dustin Cook of the Idaho Falls Police Department saw Rosemary Dycus enter a Common Cents convenience store. Transcript, Motion to Suppress Hearing, January 31, 2011, p. 6. Although initially contradictory, the officer ultimately clarified that he did not conduct a formal traffic stop of Ms. Dycus's vehicle, although he had information that she was driving without privileges. *Id.* at p. 6, 7, and 13. He began observing the entrance waiting for Ms. Dycus and other officers arrived at the scene. *Id.* at 7. The officer determined that she had entered the restroom, but found that the door was locked by its occupant. *Id.* at 10. After knocking and announcing his presence, Ms. Dycus asked him to "wait a minute" as she flushed the toilet. *Id.* at 11. However, the impatient officer decided to get the restroom key from the store clerk and force his way into the restroom. *Id.* at 12. Inside the restroom, he found Ms. Dycus, who was still getting dressed, as well as her jacket on the floor. *Id.* at 12-13. He searched the jacket and found a marijuana pipe. *Id.* at 13. At no point during these events did Officer Cook apply for a warrant. *See id.* Ms. Dycus was ultimately charged with Paraphanalia, as well as Driving Without Privileges (DWP).

Procedural History

The Defendant, Rosemary Pearl Dycus, was convicted in the United States District Court for the Seventh Judicial District for the State of Idaho, in and for the County of Bonneville on October 25, 2010. The Defendant initially was charged with violating I.C. 37-2734(A) for Possession of Drug Paraphernalia-use or Possess with Intent to Use, and Driving Without Privileges under I.C. 18-8001. Defendant brought a motion to suppress based on a violation of her right to be free from unreasonable warrantless searches and siezures as well as violation of

her right of an expectation of privacy in a public restroom. Defendant's motion was heard and denied by the Magistrate Court.

Defendant entered into a plea agreement with the State whereby she would plead guilty to Possession of Paraphernalia, and in consideration the state would dismiss the DWP. Pursuant to the plea agreement, Defendant preserved her right to appeal the Magistrate Court's denial of her suppression motion.

Defendant was sentenced on August 18, 2011, and was ordered to pay a fine of one thousand dollars ($1000) with a sentence of 3 days in the Bonneville County jail with a suspended sentence of 362 days. An informal probation term of 2 years was also ordered.

Standard of Review

While the reviewing court defers to the factual findings of the trial court unless they are clearly erroneous, it does exercise de novo review of whether the constitutional requirements were satisfied in light of those facts. *State v. Heinen*, 114 Idaho 656, 658 (Ct. App. 1988).

This is an appeal from the judgment of the United States District Court for the Seventh Judicial District for the State of Idaho, in and for the County of Bonneville in a criminal case. On August 24, 2011, a timely Notice of Appeal was filed from which this appeal follows.

Issue on Appeal

Did the District Court err in denying Defendant's appeal of the Magistrate's Court ruling on Defendant's Motion to Suppress where a law enforcement officer forced his way into a locked public restroom at a Common Cents convenience store where Rosemary Dycus had a legitimate expectation of privacy and ultimately searched Defendant's person without a warrant?

Argument

THE DISTRICT COURT CORRECTLY HELD THAT ROSEMARY DYCUS HAD A LEGITIMENT EXPECTATION OF PRIVACY IN THE COMMON CENTS PUBLIC RESTROOM

> Because the officer unreasonably entered a locked public restroom without permission or a warrant, the evidence should be suppressed unless Ms. Dycus did not have a legitimate expectation of privacy.

Article I, Section 17 of the Idaho Constitution, as well as the Fourth Amendment of the United States Constitution, protect citizens against unreasonable searches and seizures. These protection apply to people, not places. *State v. Limberhand*, 117 Idaho 456, 459-60 (Ct. App. 1990); *Katz v. U.S.*, 389 U.S. 347, 351 (1967). A warrantless search is presumed to be unreasonable. *State v. Curl*, 125 Idaho 224, 225 (Idaho 1993); *Mincey v. Arizona*, 437 U.S. 385, 390 (1978).

> Because Ms. Dycus had a legitimate expectation of privacy in the restroom, the evidence found in the jacket that was on the floor of the restroom should be suppressed as the fruit of an unconstitutional search and seizure.

The protections against unreasonable and warrantless searches applies to all areas in which a person manifests a subjective expectation of privacy that society would objectively view as reasonable. *State v. Thompson*, 114 Idaho 746, 749 (Idaho 19880); *Katz*, 389 U.S. at 361 (Harlan, J. concurring). If a person manifests a subjective expectation of privacy in a public restroom, society would objectively recognize it as reasonable. *Limberhand*, 117 Idaho at 460. Therefore, the only question remaining is whether Ms. Dycus manifested a subjective expectation of privacy in the public restroom.

To determine if a subjective expectation of privacy has manifested, the court examines "the citizen's efforts to protect his own privacy from observation by the general public, taking

into account norms of social conduct and the nature of the premises." *State v. Morris*, 131 Idaho 562, 565 (Ct. App. 1998). For example, a person who knowingly exposes an area to the public cannot also manifest a subjective expectation of privacy in that area. *State v. Delacerda*, 135 Idaho 903, 904 (Ct. App. 2001); *Katz*, 389 U.S. at 351.

A person can manifest a subjective expectation of privacy in a public restroom. *Limberhand*, 117 Idaho at 459. In that case, the fact that the person kept the door closed while he was inside the public stall and that all observable indicators (i.e. the position of his feet viewable under the stall door) suggested normal use of the stall revealed his subjective expectation of privacy. *Id.* He did this to prevent the public from viewing his activities in the stall and "was utilizing the features of the stall to prevent exposure." *Id.* No actions revealed in the record revealed any intent inconsistent with that expectation. *Id.* Therefore, the court concluded, Mr. Limberhand had manifested a subjective expectation of privacy in the public restroom stall. *Id.*

The court also noted that the subjective expectation does not hinge on the design of the restroom or stall. *Id.* This is because Article I, Section 17 and the Fourth Amendment protect people, not places, from unreasonable intrusions. *Id.* at 459-60; *Katz*, 389 U.S. at 351. While an area may be accessible to the public at other times, it may be put to a private use at any given moment, and during the period when it is being used privately, the person using the area may reasonably expect freedom from intrusions. *Katz*, 389 U.S. at 361 (Harlan, J. concurring) (discussing the Court's holding that a public telephone booth constitutes a private area when a person enters it to make a call and uses the features of the booth to prevent the public from overhearing his conversation).

That same rationale applies to public restrooms. *Limberhand*, 117 Idaho at 460. Therefore, when a person locks themselves in a public restroom or stall, they are manifesting a subjective expectation of privacy. *See id.*; *see also Delacerda*, 135 Idaho at 905. In *Delacerda*, the complete absence of any provisions for privacy in the layout of the public restroom (i.e. no stalls, dividers, or barriers between the multiple toilets, or most importantly, locks on the door), there cannot be a subjective expectation of privacy, 135 Idaho at 905. The "visual openness of the restroom interior, and *the lack of any lock* to exclude others with the restroom was in use" meant that any activity undertaken in the restroom was knowingly exposed to the public. *Id.*, *emphasis added.* This is because all activities, even the traditional and proper uses, may be observed by any person also using the restroom or who walks into the restroom. *Id.* Officers are allowed to observe what a reasonably respectful person would observe from a legitimate vantage point without a warrant. *State v. Clark*, 124 Idaho 308, 313 (Ct. App. 1993). Therefore, there was no unreasonable search in *Delacerda*. 135 Idaho at 906. However, when the features of the facility are employed to prevent others from observing activities in a public restroom (i.e. by using a lock on the door), an invasion by officers is unreasonable, beyond the scope of what a reasonably respectful person would be able to observe, and thus, violate Article I, Section 17 and the Fourth Amendment. *Limberhand*, 117 Idaho at 460-61.

The fact that Ms. Dycus used the features of the restroom to prevent entry by the public by employing the lock, she manifested a subjective expectation of privacy. *See* Transcript at 10; *contrast with Delacera*, 135 Idaho 905-06. Furthermore, there was no evidence in the record suggesting that it was a multi-toilet restroom without any privacy screens. *Contrast with Delacera*, 135 Idaho 905-06. Rather, all that the officer testified to was that it was a uni-gender restroom with a storage closet inside. *See* Transcript at 14-15. The fact that it was uni-gender

suggests that it was a single-person restroom so that a man and a woman would not be subjected to sharing the same private space while using the restroom.

The rest of the officer's observations also support a finding of a subjective expectation of privacy. All the officer's observations from his legitimate vantage point outside the door are consistent with the proper use of the restroom. *See* Transcript at 11-12; *compare with Limberhand*, 117 Idaho at 459. When Ms. Dycus entered the restroom, she locked the door. Transcript at 10. When someone knocked on the door, she asked them to wait a moment while she finished using the restroom and prepared herself to leave. *Id.* at 11-12. The magistrate found that the facts showed no indication of improper use of the facilities. *Id.* at 22. As it is not clearly erroneous, this finding is binding on the reviewing court. *See Heinen*, 114 Idaho at 658.

The protections of Article I, Section 17 and the Fourth Amendment also do not hinge on the purpose of the invasion. *See id.* The magistrate held that because the entry was unrelated to the criminal act the officer was investigating (DWP), no expectation of privacy could exist. Transcript at 22. In fact, she recognized that nothing in the record indicated any improper use of the restroom at all. *Id.* Officers cannot even establish reasonable suspicion based only on their speculations of wrongdoing, much less establish the probable cause necessary to obtain a warrant or justify a warrantless search. *See State v. Deen*, 131 Idaho 435, 436 (Idaho 1998). The fact that the officer was investigating a DWP is irrelevant, lest the protections of Article I, Section 17 and the Fourth Amendment become meaningless. Such a perspective would allow an officer to invade any area, including the sanctity of the home, without a warrant, so long as they claim to be investigating a minor infraction or misdemeanor (i.e. noise disturbance) and then prosecute for any crime for which evidence happens to be uncovered during the warrantless search. This approach, as taken by the magistrate, does not conform with established search and seizure case

law. Rather, the only relevant inquiries are: 1) whether the person manifested a subjective expectation of privacy that society would objectively recognize as reasonable; and 2) if so, whether the presumption of invalidity is overcome by an applicable exception. *See Thompson*, 114 Idaho at 749; *see also Curl*, 125 Idaho at 225.

As to the first relevant inquiry, Ms. Dycus did manifest a subjective expectation of privacy that society would objectively recognize as reasonable. *See Limberhand*, 117 Idaho at 459-60. The officer entered that protected area without a warrant. *See generally* Transcript. He looked through the jacket that was in the protected space, which constitutes a search. *See Limberhand*, 117 Idaho at 460 (holding that any invasion of the privacy interest, even if it is only visual, constitutes a search for constitutional purposes). Therefore, the search is presumed to be unreasonable unless there is an applicable exception to the warrant requirement. *Curl*, 125 Idaho at 225; *Mincey*, 437 U.S. at 390. None of the exceptions apply in this case. Therefore, the evidence found during the search must be suppressed. *State v. Brauch*, 133 Idaho 215, 219 (Idaho 1999); *State v. Fancher*, 145 Idaho 832, 840 (Ct. App. 2008).

THE DISTRICT COURT ERRED IN FINDING A REVOCATION OF DEFENDANT'S PERMISSION TO USE THE PUBLIC RESTROOM

The District Court correctly found that when Rosemary Dycus entered into the Common Cents restroom, she had a privacy interest upon entering that facility. The District Court erred in finding that an agent of Common Cents revoked their permission for her continued use of the bathroom when the officer acquired the key from the clerk. The District Court's analysis is flawed because it discounts the State's action. The Common Cents clerk did not call the police and request they remove Dycus from the restroom. The officer followed Ms. Dycus in the building pounded on the door and retrieved the key from the clerk. At Defendant's Motion to Suppress Hearing, the State did not call the clerk as a witness and no other testimony was offered

suggesting an agent of the Common Cents revoked Ms. Dycus' permission to use the restroom, prior to the officer acquiring the key and entering the restroom.

THE DISTRICT COURT ERRED IN RULING THAT THE FINDING OF THE PARAPHERNALIA WAS INEVITABLE DISCOVERY

The District Court erred in finding that the discovery of the paraphernalia was inevitable and therefore falls under the doctrine of inevitable discovery. To reach such a conclusion, the District Court has to ignore an important fact and the two inescapable consequences of that fact. The bathroom Ms. Dycus was in was a public restroom. Granted it is possible that Ms. Dycus would have left the paraphernalia on her person, but it is also conceivable that she would not have and would take other action. The fact that Ms. Dycus had options as to her behavior contradicts a foregone conclusion required for inevitable discovery. Unless Ms. Dycus left the marijuana pipe in her coat then the state would first have had to find it and second, they would then have had to be able to connect the pipe with Ms. Dycus.

In the event Ms. Dycus abandoned the pipe, then the officer would have had to find it. The officer stated he searched Ms. Dycus but does not go into detail of the extent of the search he conducted into the restroom. Without testimony to that effect, discovery is not only not inevitable, but highly unlikely. Second, even if Ms. Dycus had placed the pipe in plain view, this was a public place and state would have faced a large evidentiary hurdle connecting the pipe to Ms. Dycus.

Conclusion

Because Ms. Dycus manifested a subjective expectation of privacy in the public restroom and because society would objectively recognize that expectation as reasonable, Ms. Dycus had a legitimate expectation of privacy in the restroom, and the warrantless search of that area is

presumed to be unreasonable. No exceptions validate the search and prevent the evidence's suppression. Neither revocation of Defendant's permission to use the Common Cents restroom, nor inevitable discovery justifies the officer's forced entry into a bathroom being used by Ms. Dycus.

For the reasons set forth above, Defendant Dycus requests this court to reverse the District Court's denial of her motion to suppress, vacate her conviction and remand this case for further proceedings.

Respectfully submitted,

DATED this 20th day of May, 2012.

TIMOTHY D. FRENCH
Deputy Public Defender
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a licensed attorney for the State of Idaho, with my office in Idaho Falls, and that on 21st day of May 2012, I served a true and correct copy of the document described below on the party listed below, by mailing with the correct postage thereon, or by causing the same to be hand-delivered.

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Deputy Public Defender

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